

# TASMANIA

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## VEXATIOUS PROCEEDINGS BILL 2011

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# **VEXATIOUS PROCEEDINGS BILL 2011**

*(Brought in by the Minister for Justice, the Honourable David John Bartlett)*

## **A BILL FOR**

### **An Act to restrict vexatious proceedings**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

## **PART 1 – PRELIMINARY**

### **1. Short title**

This Act may be cited as the *Vexatious Proceedings Act 2011*.

### **2. Commencement**

This Act commences on a day to be proclaimed.

### **3. Interpretation**

In this Act, unless the contrary intention appears –

“**Australian court or tribunal**” means a court or tribunal of the Commonwealth or of a State or Territory and includes a

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body prescribed in the regulations for the purposes of this definition;

**“Court”** means the Supreme Court;

**“decision”** includes determination;

**“institute”**, in relation to proceedings, includes –

- (a) for civil proceedings, the taking of a step or the making of an application that may be necessary before proceedings can be started against or in relation to a party; and
- (b) for proceedings before a tribunal, the taking of a step or the making of an application that may be necessary before proceedings can be started before the tribunal; and
- (c) for criminal proceedings, the making of a complaint or the obtaining of a warrant for the arrest of an alleged offender; and
- (d) for civil or criminal proceedings or proceedings before a tribunal, the taking of a step or the making of an application that may be necessary to start an appeal in relation to the proceedings or to a decision made in the course of the proceedings;

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**“order”** includes declaration and injunction;

**“proceedings”** includes –

- (a) any cause, matter, action, suit, proceeding, trial, complaint or inquiry of any kind; and
- (b) any proceedings, including interlocutory proceedings, taken in connection with or incidental to proceedings pending before a court or tribunal; and
- (c) any calling into question of a decision, whether or not a final decision, of a court or tribunal, and whether by appeal, challenge, review or in another way;

**“proceedings of a particular type”** includes –

- (a) proceedings in relation to a particular matter; and
- (b) proceedings against a particular person; and
- (c) proceedings in a particular court or tribunal;

**“vexatious proceedings”** includes –

- (a) proceedings that are an abuse of the process of a court or tribunal; and

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- (b) proceedings instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
- (c) proceedings instituted or pursued without reasonable ground; and
- (d) proceedings conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose;

**“vexatious proceedings order”** means an order made under section 6(2).

**4. Inherent jurisdiction and powers not affected**

This Act does not affect any inherent jurisdiction of a court or tribunal or any powers a court or tribunal has other than under this Act to restrict vexatious proceedings.

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**PART 2 – VEXATIOUS PROCEEDINGS**

**5. Applications for vexatious proceedings orders**

- (1) Any of the following persons may apply to the Court for a vexatious proceedings order in relation to a person mentioned in section 6(1)(a) or (b):
  - (a) the Attorney-General;
  - (b) the Solicitor-General;
  - (c) the Director of Public Prosecutions;
  - (d) a registrar of a court or tribunal;
  - (e) the Administrator of the Magistrates Court;
  - (f) a person against whom another person has instituted or conducted proceedings;
  - (g) a person who has a sufficient interest in the matter.
- (2) An application may be made by a person mentioned in subsection (1)(f) or (g) only with the leave of the Court.

**6. Making vexatious proceedings orders**

- (1) This section applies if the Court is satisfied that a person is –

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- (a) a person who has frequently instituted or conducted vexatious proceedings in Australia; or
  - (b) a person who, acting in concert with a person who is subject to a vexatious proceedings order or who is mentioned in paragraph (a), has instituted or conducted vexatious proceedings in Australia.
- (2) The Court may make any or all of the following orders:
  - (a) an order staying all or part of any proceedings in Tasmania already instituted by the person;
  - (b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, in Tasmania;
  - (c) any other order the Court considers appropriate in relation to the person including an order as to costs.
- (3) The Court may make a vexatious proceedings order on its own initiative or on the application of a person mentioned in section 5(1).
- (4) The Court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.
- (5) For subsection (1), the Court may have regard to –



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- (a) proceedings instituted or conducted in any Australian court or tribunal, including proceedings instituted or conducted before the commencement of this section; and
  - (b) orders made by any Australian court or tribunal, including orders made before the commencement of this section.

**7. Order may be varied or set aside**

- (1) The Court may, by order, vary or set aside a vexatious proceedings order.
- (2) The Court may make the order on its own initiative or on the application of –
  - (a) the person subject to the vexatious proceedings order; or
  - (b) a person mentioned in section 5(1).

**8. Order may be reinstated**

- (1) This section applies if –
  - (a) the Court sets aside a vexatious proceedings order prohibiting a person from instituting proceedings, or proceedings of a particular type, in Tasmania; and

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- (b) the Court is satisfied that, within 5 years of the vexatious proceedings order being set aside –
  - (i) the person has instituted or conducted a vexatious proceeding in an Australian court or tribunal; or
  - (ii) the person has acted in concert with another person who has instituted or conducted a vexatious proceeding in an Australian court or tribunal.
- (2) The Court may –
  - (a) by order, reinstate the vexatious proceedings order; and
  - (b) make any other order the Court considers appropriate in relation to the person including, for example, an order varying the vexatious proceedings order.
- (3) The Court may make an order under subsection (2) on its own initiative or on the application of a person mentioned in section 5(1).
- (4) The Court must not reinstate a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.

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**9. Notification and register of orders**

- (1) This section applies in relation to –
  - (a) a vexatious proceedings order; or
  - (b) an order varying or setting aside a vexatious proceedings order; or
  - (c) an order reinstating a vexatious proceedings order; or
  - (d) an order made under section 8(2)(b).
- (2) The Registrar of the Court must arrange for a copy of the order to be –
  - (a) published in the *Gazette* within 21 days after the order is made; and
  - (b) entered, within 7 days after the order is made, in a publicly available register kept for the purposes of this Act.
- (3) The Registrar of the Court may also arrange for details of the order to be published in another way.
- (4) The Registrar of the Court may remove a copy of an order from the register mentioned in subsection (2)(b) if the Registrar is satisfied that the person subject to the vexatious proceedings order has died.
- (5) Failure to comply with paragraph (a) or (b) of subsection (2) does not affect the validity of the order.

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Part 3 – Particular Consequences of Vexatious Proceedings Orders

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**PART 3 – PARTICULAR CONSEQUENCES OF  
VEXATIOUS PROCEEDINGS ORDERS**

**10. Vexatious proceedings order prohibiting institution of proceedings**

- (1) If the Court makes a vexatious proceedings order prohibiting a person from instituting proceedings, or proceedings of a particular type, in Tasmania –
  - (a) the person may not institute proceedings, or proceedings of the particular type, in Tasmania without the leave of the Court under section 13; and
  - (b) another person may not, acting in concert with the person, institute proceedings, or proceedings of the particular type, in Tasmania without the leave of the Court under section 13.
- (2) If proceedings are instituted in contravention of subsection (1), the proceedings are permanently stayed.
- (3) Without limiting subsection (2), the Court, or the court or tribunal in which the proceedings are instituted, may make –
  - (a) an order declaring that proceedings are proceedings to which subsection (2) applies; and

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- (b) another order in relation to the stayed proceedings it considers appropriate, including an order for costs.
- (4) The Court, or the court or tribunal in which the proceedings are instituted, may make an order under subsection (3) on its own initiative or on the application of a person mentioned in section 5(1).

**11. Application for leave to institute proceedings**

- (1) This section applies to a person (“**the applicant**”) who is –
  - (a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, in Tasmania; or
  - (b) acting in concert with another person who is subject to an order mentioned in paragraph (a).
- (2) The applicant may apply to the Court for leave to institute proceedings that are subject to the order.
- (3) The applicant must file an affidavit with the application that –
  - (a) lists all occasions on which the applicant has applied for leave under this section; and

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- (b) lists all other proceedings the applicant has instituted in Australia, including proceedings instituted before the commencement of this section; and
  - (c) discloses all facts material to the application, whether supporting or adverse to the application, that are known to the applicant.
- (4) The applicant must not serve a copy of the application or affidavit on any person unless –
  - (a) an order is made under section 13(1)(a); and
  - (b) the copy is served in accordance with the order.
- (5) The Court may dispose of the application by –
  - (a) dismissing the application under section 12; or
  - (b) granting the application under section 13.
- (6) The applicant may not appeal from a decision disposing of the application.

**12. Dismissing application for leave**

- (1) The Court must dismiss an application made under section 11 for leave to institute proceedings if it considers –

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- (a) the affidavit does not substantially comply with section 11(3); or
    - (b) the proceedings are vexatious proceedings.
  - (2) The application may be dismissed even if the applicant does not appear at the hearing of the application.

**13. Granting application for leave**

- (1) Before the Court grants an application made under section 11 for leave to institute proceedings, it must –
  - (a) order that the applicant serve each relevant person with a copy of the application and affidavit and a notice that the person is entitled to appear and be heard on the application; and
  - (b) give the applicant and each relevant person, on appearance, an opportunity to be heard at the hearing of the application.
- (2) At the hearing of the application, the Court may receive as evidence any record of evidence given, or affidavit filed, in any proceedings in any Australian court or tribunal in which the applicant is, or at any time was, involved either as a party or as a person acting in concert with a party.
- (3) The Court may grant leave to institute particular proceedings or proceedings of a particular type

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(the “**proceedings**”), subject to the conditions the Court considers appropriate.

- (4) However, the Court may grant leave only if it is satisfied that the proceedings are not vexatious proceedings.
- (5) In this section –

**“relevant person”**, in relation to the applicant for leave to institute the proceedings, means such of the following persons as the Court may direct:

- (a) the person against whom the applicant proposes to institute the proceedings;
- (b) the Attorney-General;
- (c) the Solicitor-General;
- (d) the Director of Public Prosecutions;
- (e) the Registrar of the Court if the Registrar applied for a vexatious proceedings order in relation to the applicant;
- (f) any person mentioned in section 5(1)(d), (e), (f) or (g) who applied for a vexatious proceedings order in relation to the applicant;
- (g) any other person the Court considers should be served.



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**PART 4 – MISCELLANEOUS**

**14. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Justice.

**15. Consequential amendments**

The legislation specified in Schedule 1 is amended as specified in that Schedule.

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**SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS**

Section 15

***Anti-Discrimination Act 1998***

1. After section 78, the following section is inserted in Division 4:

**78A. Tribunal may make application under *Vexatious Proceedings Act 2011***

On receipt of a complaint made by a person which is referred to it under section 78, the registrar of the Tribunal may apply to the Supreme Court under the *Vexatious Proceedings Act 2011* for a vexatious proceedings order in relation to that person.

***Guardianship and Administration Act 1995***

1. After section 69, the following section is inserted in Division 1:

**69A. Board may make application under *Vexatious Proceedings Act 2011***

On receipt of an application under this Act, the registrar may apply to the Supreme Court under the *Vexatious Proceedings Act 2011* for a vexatious proceedings order in relation to the applicant.

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***Justices Act 1959***

1. After section 50D, the following section is inserted in Part VI:

**50E. Chief Clerk of Petty Sessions may make application under *Vexatious Proceedings Act 2011***

The Chief Clerk of Petty Sessions may apply to the Supreme Court under the *Vexatious Proceedings Act 2011* for a vexatious proceedings order in relation to a person who has instituted any proceedings in a court of summary jurisdiction under this Act.

***Magistrates Court (Administrative Appeals Division) Act 2001***

1. After section 20, the following section is inserted in Subdivision 1:

**20A. Court may make application under *Vexatious Proceedings Act 2011***

On receipt of an application under section 17, the Administrator may apply to the Supreme Court under the *Vexatious Proceedings Act 2011* for a vexatious proceedings order in relation to the applicant.

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***Magistrates Court (Civil Division) Act 1992***

1. After section 13A, the following section is inserted in Part 3:

**13B. Court may make application under *Vexatious Proceedings Act 2011***

The Administrator may apply to the Supreme Court under the *Vexatious Proceedings Act 2011* for a vexatious proceedings order in relation to a person who institutes any action or proceeding under this Act.

***Mental Health Act 1996***

1. After section 53, the following section is inserted in Division 2:

**53A. Mental Health Tribunal may make application under *Vexatious Proceedings Act 2011***

On receipt of an application for review under this Act, the registrar may apply to the Supreme Court under the *Vexatious Proceedings Act 2011* for a vexatious proceedings order in relation to the applicant.

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***Resource Management and Planning Appeal Tribunal Act  
1993***

1. After section 13, the following section is inserted in Part 5:

**13A. Appeal Tribunal may make application  
under *Vexatious Proceedings Act 2011***

On receipt of an appeal under section 13, the registrar of the Appeal Tribunal may apply to the Supreme Court under the *Vexatious Proceedings Act 2011* for a vexatious proceedings order in relation to the appellant.